

**ECONOMIC DEVELOPMENT  
AND JOB CREATION**

EVB/DH/BA

November 2, 2018

7  
11-0  
(Sommerville, Freeman  
absent)

Requested by the Finance Department

Offered by **SIMS**

ORDINANCE NO. 393-2018 authorizing the Mayor to execute and deliver a Development Agreement between the City and Huntington National Bank; and declaring an emergency.

WHEREAS, Huntington National Bank ("HNB") has determined to locate a regional headquarters located on the Cascade Plaza in the City of Akron; and

WHEREAS, to create or preserve jobs and enhance employment opportunities, to promote the development of sites and facilities for commercial purposes; to promote revitalization in an environmentally safe and productive manner; and to improve the economic and general well-being of the people of the City, the City has determined to enter into a Development Agreement with HNB (the "Development Agreement") to promote the redevelopment of the Property into HNB's regional headquarters; and

WHEREAS, the City intends to utilize a growth incentive distribution program, as further described in the Development Agreement;

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron, Summit County, Ohio, that:

Section 1. This Council hereby approves the Development Agreement and the City's obligations thereunder, and the Mayor is hereby authorized to sign and deliver the Development Agreement on behalf of the City in substantially the form of such Development Agreement on file with the Clerk, together with such revisions or additions as are approved by the Director of Law as being consistent with the objectives and requirements of this Ordinance and are necessary or desirable to enable the Project to proceed. The signing and delivery by the Mayor, and the approval of the Director of Law, of the Development Agreement shall be conclusive evidence that any revisions, additions or amendment to the forms thereof currently on file with the Clerk have been so approved and are consistent with the objectives of this Ordinance and are necessary or desirable to enable the Project to proceed.

Section 2. The Mayor, the Director of Law, the Director of Finance, the Director of Public Service, the Director of Planning and Urban Development, and any other City Officials, as appropriate, be and are hereby authorized to execute, certify, and/or furnish other such documents, agreements, instruments, and all other actions as are necessary to establish the terms and conditions of the Development Agreement referred to in this ordinance and which are incidental to carrying out the purposes of this ordinance. The Mayor is further authorized to sign and deliver from time to time such amendments or supplements to the Development Agreement as are necessary and incidental to carrying out the purpose of this Ordinance, such agreements and instruments, and as are approved by the Director of Law.

Section 3. This Council hereby finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with the law.

Section 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the reason that it is immediately necessary to enter into the Development Agreement in order to expedite the undertaking and carrying out of the Project, thereby allowing HNB to timely relocate its employees under its existing contracts, and in order to expedite the creation and preservation of jobs and employment opportunities and the development of sites and facilities in the City, and to enable the City to timely meet its obligations, and provided this Ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed: November 19/, 2018

Ruth G. Kent  
Clerk of Council

[Signature]  
President of Council

Approved: 11/26, 2018

[Signature]  
Mayor

RECEIVED  
2018 NOV -2 AM 11:49  
AKRON CITY COUNCIL

**CITY OF AKRON, OHIO  
UNIFORM CITY COUNCIL REPORT**

**PART I**

**Subject/Project:** The Cascade Project

**Department of Origin:** Mayor's Office

**Date:** November 5, 2018

**Division of Origin:** Economic Development

**Fact Sheet Prepared by:** Samuel DeShazor

**Date:** November 5, 2018

**FINANCIAL DATA:**

	Budgeted Costs		Current Estimate of Cost		Appropriation Over Budgeted Cost
Current Request:	Source	Amount	Source	Amount	N/A
		0		0	
Total Project (If Applicable):	Source	Amount	Source	Amount	N/A
		0		0	

**PART II**

**Purpose of Legislation:** To provide legislation to approve a Development Agreement between the City of Akron and Huntington National Bank and its regional headquarters.

**Alternatives(s):** N/A

**Earlier Legislation on this Subject:** : N/A

1.1 The Cascade Project Generally. The Cascade Project as described herein, shall encompass the construction projects undertaken by the City, which are described in more detail below. The Parties acknowledge that the City has and will continue to undertake the Cascade Project as consideration for Huntington maintaining its Regional Headquarters within the City and meeting certain employment metrics (described below) for which Huntington shall also receive an incentive distribution, as described further herein.

1.2 Garage Lighting Project.

(a) Project. The City will replace and upgrade the lighting in the Parking Garage (the “Garage Lighting Project”) at a cost not to exceed One Million Dollars (\$1,000,000.00).

(b) Garage Lighting Project Plans and Specifications. The Garage Lighting Project will be undertaken by the City substantially in accordance with plans and specifications prepared by or on behalf of the City.

(c) Garage Lighting Project Schedule. Subject to Force Majeure, the availability of funding, or other changes allowed by this Agreement, the City will use commercially reasonable best efforts to complete the Garage Lighting Project by December 31, 2019.

1.3 Cascade Plaza Stairs Project.

(a) Project. Prior to the execution of this Agreement, the City restored the back steps of the Plaza overlooking Quaker Street (the “Plaza Stairs Project”).

1.4 Garage Signage Project.

(a) Project. Prior to the execution of this Agreement, the City updated and enhanced the signage in and/or near the Parking Garage, which included signage for assigned parking spots, directions within the Parking Garage, and directions to entrances/exits (the “Garage Signage Project”).

1.5 Third-Party Cascade Improvements. Huntington acknowledges that there may be further development and upgrades to existing structures, surfaces, buildings, and roadways associated with other parties and structures in and around the Plaza. Huntington agrees and acknowledges these additional construction projects may alter the access to the Plaza or otherwise affect the ingress, egress, or right-of-way, including the possible addition of an access road from Bowery Street to the Cascade Plaza Hotel. Additionally, Huntington agrees and acknowledges that these additional construction projects, negotiations with third-parties involved in those additional construction projects, and potential availability of funding from the Transportation Infrastructure Grant (“TIGER”) may have a negative impact on the completion date of not only the third-party improvement projects, but also the Cascade Projects. Huntington further agrees and acknowledges, that the completion dates for the various Cascade Projects set forth in Section 1.2 is an estimate and Huntington shall not seek damages of any kind from the City related to reasonable delays with respect to that completion date or the completion dates of those projects completed prior to the execution of this Agreement. City agrees that the additional construction projects will not unreasonably interfere with Huntington’s operations or its ingress to or egress from its location.

**HUNTINGTON COVENANTS; GROWTH INCENTIVE DISTRIBUTION PROGRAM**

3.1 Covenants of Huntington. Huntington covenants to the City and agrees as follows:

(a) Huntington will utilize its best efforts to maintain: (i) its regional headquarters within Akron’s city limits; (ii) at least One Thousand Two Hundred (1,200) jobs within Akron’s city limits (“Minimum Baseline Jobs”) and (iii) the Minimum Baseline Payroll (defined below) within Akron’s city limits beginning January 1, 2018, and through December 31, 2022.



(b) The "Minimum Baseline Payroll" shall mean the greater of, (i) Sixty-Three Million Dollars (\$63,000,000.00) in gross annual payroll or (ii) the total gross amount of Huntington's annual payroll within the City existing as of December 31, 2017, fully annualized, but excluding certain one-time stay bonuses and the 179 former employees' payroll and termination pay as described on "Exhibit A."

3.2 Growth Incentive Distribution Program. The Parties agree to the Growth Incentive Distribution Program as described herein. Payments under the Growth Incentive Distribution Program are only triggered if Huntington maintains its regional headquarters within the City and meets both the Minimum Baseline Jobs and Minimum Baseline Payroll requirements within a given year. The term for the Growth Incentive Distribution Program shall commence on January 1, 2018 and end on December 31, 2022 (the "Term"). The Parties understand and agree that Huntington will only be eligible for the Incentive Distribution (as described herein) during the Term. The Parties further agree as follows:

(a) The City agrees to an incentive distribution that will be equivalent to Thirty-Five Percent (35%) of new taxes that are collected from earnings from Huntington's employees within Akron's city limits as a result of new job creation above and beyond the Minimum Baseline Jobs and Minimum Baseline Payroll earned on those new positions (the "Incentive Distribution"). The Incentive Distribution is limited to and shall be calculated based upon the City's base income tax of Two Percent (2%), regardless of any future increases. The Incentive Distribution eligibility shall be determined annually by the City by the end of July of the following year provided that Huntington has provided all required and necessary information to the City by March 31<sup>st</sup> of that year. If all of the eligibility requirements are met during the preceding year, the one-time-annual Incentive Distribution payment shall be made within three (3) months of completion of the City's review and determination regarding the same.

(b) Huntington shall provide the City all data, financial or otherwise, required for the City to perform the annual review, which shall include but not be limited to income tax release forms, complete income tax returns, payroll records and other employment information. If Huntington believes any documentation submitted to the City is confidential, then Huntington shall so mark each such document as confidential. To the extent the City receives a public records request, subpoena, discovery request, or other request related to this Agreement, the Cascade Projects, the Growth Incentive Distribution Program, or the Incentive Distributions, then the City shall contact Huntington prior to releasing any documents previously marked by Huntington as confidential and Huntington shall have the full responsibility to defend the non-disclosure of any such document. In the event that Huntington does not respond to the City's notification of the request within seven (7) business days of Huntington's receipt of the same, then the City shall have the right to disseminate the confidential information, as it deems necessary, without any liability whatsoever.

(c) If Huntington fails to maintain its regional headquarters within the City at any time during the Term: (i) then City shall have the option of requiring Huntington to repay the total amount of all Incentive Distribution payments made under the Growth Incentive Distribution Program during the entirety of the Term; and (ii) the City, in its sole discretion, may terminate any/all portions of the Cascade Project with no further liability or obligation to Huntington regarding the same.

(d) Huntington agrees and acknowledges that the terms of this Agreement are subject to the approval of the City Planning Commission and/or the Akron City Council.

**ANNUAL COLLECTION: \$1,260,000**

**5 YEAR COLLECTION ON BASE: \$6,300,000**

**AVERAGE SALARY: \$52,500 / JOB**

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between The Huntington National Bank, a national banking association, located at III Cascade Plaza, Akron, Ohio 44308 ("Huntington"), and the City of Akron, Ohio a charter municipal corporation located at 166 South High Street, Akron, Ohio 44308 (the "City"), with Huntington and the City each a ("Party") and collectively (the "Parties").

**RECITALS:**

- A. The City owns Cascade Plaza (the "Plaza") and the Cascade Plaza Parking Garage (the "Parking Garage") located in the City on South Main Street between West Bowery and Mill Streets.
- B. Huntington has operations located on or around the Plaza and at other locations throughout the City. Huntington intends to expand its operations and to continue to expand its presence in the City by hiring new employees.
- C. The City has determined it appropriate to cause repairs, upgrades, and/or renovations to be made to the Plaza and the Parking Garage (together the "Cascade Project"), as further described in Article I below and Huntington desires to cooperate with the City in the completion of the Cascade Project.
- D. The City, by its execution of this Agreement, hereby determines that the Cascade Project is in the best interest of the City, and the City desires and intends to cooperate with Huntington to complete the Cascade Project for the mutual benefit of Huntington and the City.

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and intending to be legally bound, the Parties hereto agree as follows:

**ARTICLE I****THE CASCADE PROJECT**

1.1 The Cascade Project Generally. The Cascade Project as described herein, shall encompass the construction projects undertaken by the City, which are described in more detail below. The Parties acknowledge that the City has and will continue to undertake the Cascade Project as consideration for Huntington maintaining its Regional Headquarters within the City and meeting certain employment metrics (described below) for which Huntington shall also receive an incentive distribution, as described further herein.

1.2 Garage Lighting Project.

(a) Project. The City will replace and upgrade the lighting in the Parking Garage (the "Garage Lighting Project") at a cost not to exceed One Million Dollars

(\$1,000,000.00).

(b) Garage Lighting Project Plans and Specifications. The Garage Lighting Project will be undertaken by the City substantially in accordance with plans and specifications prepared by or on behalf of the City.

(c) Garage Lighting Project Schedule. Subject to Force Majeure, the availability of funding, or other changes allowed by this Agreement, the City will use commercially reasonable best efforts to complete the Garage Lighting Project by December 31, 2019.

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1.5 Third-Party Cascade Improvements. Huntington acknowledges that there may be further development and upgrades to existing structures, surfaces, buildings, and roadways associated with other parties and structures in and around the Plaza. Huntington agrees and acknowledges these additional construction projects may alter the access to the Plaza or otherwise affect the ingress, egress, or right-of-way, including the possible addition of an access road from Bowery Street to the Cascade Plaza Hotel. Additionally, Huntington agrees and acknowledges that these additional construction projects, negotiations with third-parties involved in those additional construction projects, and potential availability of funding from the Transportation Infrastructure Grant ("TIGER") may have a negative impact on the completion date of not only the third-party improvement projects, but also the Cascade Projects. Huntington further agrees and acknowledges, that the completion dates for the various Cascade Projects set forth in Section 1.2 is an estimate and Huntington shall not seek damages of any kind from the City related to reasonable delays with respect to that completion date or the completion dates of those projects completed prior to the execution of this Agreement. City agrees that the additional construction projects will not unreasonably interfere with Huntington's operations or its ingress to or egress from its location.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Huntington. To Huntington's knowledge, all of the documents and information provided to the City by or on behalf of Huntington are true, correct and complete in all material respects and shall be true and correct throughout the term of this Agreement. Huntington represents and warrants that the following matters are true and

correct as of the date of this Agreement:

(a) There are no actions, suits or proceedings pending or threatened against or affecting Huntington which could impair Huntington's ability to perform its obligations under this Agreement.

(b) Huntington is a national banking association duly organized, validly existing and in good standing under the laws of the United States and is authorized to conduct business in the State of Ohio.

(c) No brokerage commission, finder's fee or other, similar compensation is payable in connection with the transactions contemplated hereunder.

(d) This Agreement and all of the documents or instruments being executed in connection with the transactions contemplated hereunder: (i) have been duly authorized, executed and delivered; (ii) are the legal, valid and binding obligations of Huntington, enforceable against it in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally) and (iii) do not violate any provision of any agreement to which it is a party or to which it is subject.

2.2 Representations and Warranties of the City. The City represents and warrants that the following matters are true and correct as of the date of this Agreement:

(a) To City's knowledge, all of the documents and information provided to Huntington by or on behalf of the City are true, correct and complete in all material respects.

(b) There are no actions, suits or proceedings pending or threatened against or affecting the City which could impair the City's ability to perform its obligations under this Agreement.

(c) The City is a charter municipal corporation, duly organized and validly existing under the laws of the State of Ohio.

(d) No brokerage commission, finder's fee or other, similar compensation is payable in connection with the transactions contemplated hereunder.

(e) This Agreement and all of the documents or instruments being executed in connection with the transactions contemplated hereunder: (i) have been duly authorized, executed and delivered; (ii) are the legal, valid and binding obligations of the City, enforceable against it in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally) and (iii) do not violate any provision of any agreement to which it is a party or to which it is subject.



2.3 Definition of Knowledge. Whenever a representation or warranty is made in this Agreement to the “knowledge” of a Party, such representation and warranty shall be limited to (a) facts and circumstances within the actual and present knowledge of such Party, and (b) facts and circumstances that were disclosed in any written notice at any time received by such Party.

### ARTICLE III

#### **HUNTINGTON COVENANTS; GROWTH INCENTIVE DISTRIBUTION PROGRAM**

3.1 Covenants of Huntington. Huntington covenants to the City and agrees as follows:

(a) Huntington will utilize its best efforts to maintain: (i) its regional headquarters within Akron’s city limits; (ii) at least One Thousand Two Hundred (1,200) jobs within Akron’s city limits (“Minimum Baseline Jobs”) and (iii) the Minimum Baseline Payroll (defined below) within Akron’s city limits beginning January 1, 2018, and through December 31, 2022.

(b) The “Minimum Baseline Payroll” shall mean the greater of, (i) Sixty-Three Million Dollars (\$63,000,000.00) in gross annual payroll or (ii) the total gross amount of Huntington’s annual payroll within the City existing as of December 31, 2017, fully annualized, but excluding certain one-time stay bonuses and the 179 former employees’ payroll and termination pay as described on “**Exhibit A.**”

3.2 Growth Incentive Distribution Program. The Parties agree to the Growth Incentive Distribution Program as described herein. Payments under the Growth Incentive Distribution Program are only triggered if Huntington maintains its regional headquarters within the City and meets both the Minimum Baseline Jobs and Minimum Baseline Payroll requirements within a given year. The term for the Growth Incentive Distribution Program shall commence on January 1, 2018 and end on December 31, 2022 (the “Term”). The Parties understand and agree that Huntington will only be eligible for the Incentive Distribution (as described herein) during the Term. The Parties further agree as follows:

(a) The City agrees to an incentive distribution that will be equivalent to Thirty-Five Percent (35%) of new taxes that are collected from earnings from Huntington’s employees within Akron’s city limits as a result of new job creation above and beyond the Minimum Baseline Jobs and Minimum Baseline Payroll earned on those new positions (the “Incentive Distribution”). The Incentive Distribution is limited to and shall be calculated based upon the City’s base income tax of Two Percent (2%), regardless of any future increases. The Incentive Distribution eligibility shall be determined annually by the City by the end of July of the following year provided that Huntington has provided all required and necessary information to the City by March 31<sup>st</sup> of that year. If all of the eligibility requirements are met during the preceding year, the one-time-annual Incentive Distribution payment shall be made within three (3) months of completion of the City’s review and determination regarding the same.

(b) Huntington shall provide the City all data, financial or otherwise, required for the City to perform the annual review, which shall include but not be limited to

income tax release forms, complete income tax returns, payroll records and other employment information. If Huntington believes any documentation submitted to the City is confidential, then Huntington shall so mark each such document as confidential. To the extent the City receives a public records request, subpoena, discovery request, or other request related to this Agreement, the Cascade Projects, the Growth Incentive Distribution Program, or the Incentive Distributions, then the City shall contact Huntington prior to releasing any documents previously marked by Huntington as confidential and Huntington shall have the full responsibility to defend the non-disclosure of any such document. In the event that Huntington does not respond to the City's notification of the request within seven (7) business days of Huntington's receipt of the same, then the City shall have the right to disseminate the confidential information, as it deems necessary, without any liability whatsoever.

(c) If Huntington fails to maintain its regional headquarters within the City at any time during the Term: (i) then City shall have the option of requiring Huntington to repay the total amount of all Incentive Distribution payments made under the Growth Incentive Distribution Program during the entirety of the Term; and (ii) the City, in its sole discretion, may terminate any/all portions of the Cascade Project with no further liability or obligation to Huntington regarding the same.

(d) Huntington agrees and acknowledges that the terms of this Agreement are subject to the approval of the City Planning Commission and/or the Akron City Council.

#### **ARTICLE IV**

##### **REMEDIES**

4.1 Pursuit by a Party to this Agreement of any remedy permitted under this Agreement or as otherwise permitted by law does not preclude such Party to pursue any other remedy provided by law or in equity.

#### **ARTICLE V**

##### **APPROVALS**

5.1 The Parties mutually agree to cooperate, pursue and seek to secure any and all necessary approvals for the Cascade Project. Unless otherwise stated herein, any approval required by the City under this Agreement shall be made by the Mayor or his designee, and any approval required by Huntington under this agreement shall be made by Huntington's Chief Executive Officer or his/her designee.

#### **ARTICLE VI**

##### **NOTICES**

6.1 All notices, requests, and communications required or permitted hereunder shall be in writing and shall be deemed to have been received (a) 24 hours after deposit with a nationally recognized overnight delivery service, or (b) if mailed, upon the first to occur of actual

receipt or three business days after being placed in the United States mail, postage prepaid, registered or certified mail, with return receipt requested. The addresses to which notices shall be sent are set forth below. Notice of any change in address by any of the Parties to this Agreement shall be given in writing to the other Party as provided above.

if to Huntington:     The Huntington National Bank, N.A.  
                              41 S. High Street  
                              Columbus, Ohio 43287  
                              Attn: Senior Vice President, Chief Legal Officer  
                                      and Corporate Secretary  
                              Phone:  
                              Fax:

with a copy to:        The Huntington National Bank, N.A.  
                              III Cascade Plaza  
                              Akron, Ohio 44308  
                              Attn:  
                              Phone:  
                              Fax:

if to the City:         The City of Akron  
                              166 South High Street  
                              Akron, Ohio 44308  
                              Attn: Mayor  
                              Phone: (330) 375-2345  
                              Fax: (330) 375-2468

with a copy to:        The City of Akron  
                              161 South High Street, Suite 202  
                              Akron, Ohio 44308  
                              Attn: Director of Law  
                              Phone: (330) 375-2030  
                              Fax: (330) 375-2041

and a copy to:         The City of Akron  
                              166 South High Street  
                              Akron, Ohio 44308  
                              Attn: Deputy Mayor of Economic Development  
                              Phone: (330) 375-2770  
                              Fax: (330) 375-2387

## **ARTICLE VII**

### **MISCELLANEOUS**

7.1     Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. All disputes arising under this Agreement must be litigated in

the Court of Common Pleas in and for Summit County, Ohio or the Federal Court for the Northern District of Ohio, and the Parties consent to submit themselves to the jurisdiction and venue of such courts and that service of process may be made upon them at an address designated in Article VI hereof.

7.2 Entire Agreement; Beneficiaries. This Agreement, all the agreements referred to herein, and all exhibits identified herein represent the entire agreement between the Parties with regard to the Cascade Project and Growth Incentive Distribution Program, and all prior agreements are superseded hereby, but only those agreements that relate to the Cascade Project or the Growth Incentive Distribution Program and only to the extent inconsistent with this Agreement. Nothing in this clause relates to, alters, or supersedes any other agreement between the Parties. This Agreement is intended for the benefit of the City and Huntington, and no other party other than those specifically listed in this Agreement, is benefited hereby.

7.3 No Waiver. The failure of either Party to seek redress for violation, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver of such strict performance, and the Parties shall have all remedies provided in this Agreement and by applicable law with respect to any subsequent act which would constitute a violation.

7.4 Interpretation. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The paragraph headings used in this Agreement are intended for reference but those only and shall not be considered in the interpretation of the terms and conditions of this Agreement.

7.5 Severability. If one or more of the provisions of this Agreement or any application of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application of such provisions shall in no way be affected or impaired.

7.6 Amendments. This Agreement may be amended, from time to time, but only in a writing duly executed and signed by both Parties.

7.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and each said counterpart shall constitute one and the same instrument.

7.8 Additional Acts. In connection with this Agreement and all transactions contemplated by this Agreement, the Parties each agree to work in good faith and execute and deliver such additional documents and instruments and take all such necessary action and perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions; provided however, this Agreement may be modified only in accordance with the terms hereof.

7.9 Exhibits and Recitals. All exhibits and recitals referred to herein shall be considered a part of this Agreement as if fully incorporated herein and with the same force and effect as if such exhibit had been included herein in full.

7.10 Extent of Covenants; No Personal Liability. All covenants, obligations agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement of a Party under this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, employee or agent of the City or the legislative authority of the City or of an employee, officer or director of Huntington, respectively, other than in their official capacities, and neither the members of the legislative authority of the City nor any official or employee of the City or director, officer or employee of Huntington executing this Agreement shall be liable personally on any of such documents or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the City or Huntington contained in this Agreement.

7.11 Equal Employment Requirements. Huntington represents that it follows and will follow during the Term of this Agreement equal opportunity employment practices consistent with Chapter 34, Codified Ordinances of Akron.

## **ARTICLE VIII**

### **FORCE MAJEURE**

8.1 Neither the City nor Huntington will be in breach of any provision of this Agreement that is subject to Force Majeure if (i) the Party relying on Force Majeure notifies the other Party within five (5) business days of the occurrence of a Force Majeure cause, circumstance or event and (ii) the Party relying on Force Majeure uses commercially reasonable efforts to remove the effects of the Force Majeure cause, circumstance or event, provided the settlement of strikes, labor disputes or other industrial disturbances shall be entirely within the sole discretion of the Party relying on Force Majeure.

8.2 For the purposes of this Agreement, ("Force Majeure") means, without limitation, the following: (i) acts of God, strikes, lockouts, labor disputes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State of Ohio or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; embargoes; explosions; malfunction or accident to facilities, machinery, or partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or (ii) any cause, circumstance or event not reasonably within the control of the Party relying on Force Majeure.

(Remainder of page left blank intentionally – signatures on following page.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**THE HUNTINGTON NATIONAL BANK,  
NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**THE CITY OF AKRON, OHIO**

By: \_\_\_\_\_  
Daniel Horrigan, Mayor

Approved as to form and correctness:

\_\_\_\_\_  
Eve V. Belfance  
Director of Law  
City of Akron, Ohio



## CITY'S FISCAL OFFICER'S CERTIFICATE

I hereby certify, that payment will be made on invoices issued to the City of Akron under this agreement, and that sufficient money is in the treasury or in the process of collection to the credit of the appropriate fund or division to discharge the City's obligation under this agreement authorized by Ordinance No. \_\_\_\_\_-201\_\_.

\_\_\_\_\_  
Diane L. Miller-Dawson  
Director of Finance

**Must be completed by Division/Department:**

Contract not to exceed: \$ \_\_\_\_\_

Originating Division: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

**Banner Distribution (by year)**

Year	2017	2018	2019	future	<b><u>Total</u></b>
Amount (to encumber)					
Fund					
Org.					
Account					
Actv.					
Locn.					

**Funding Source(s)**

Underlying source of payment (granting agency, Sewer Fund, etc.), expected reimbursement amounts, and timeline.

--

**Contract Number:**

(To be completed by Accounting) \_\_\_\_\_

**Date:** \_\_\_\_\_